

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHARON G. YASKULSKI) No. 84R-1033
)

For Appellant: Sharon G. Yaskulski,
in pro. per.

For Respondent: Noel J. Robinson
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a),^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Sharon G. Yaskulski for refund of personal income tax in the amounts of \$426 and \$252 for the years 1977 and 1978, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

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The sole issue for consideration in this appeal is whether appellant's claims for refund for taxable years 1977 and 1978 are barred by the statute of limitations.

Appellant filed amended 1977 and 1978 returns which were received by respondent on February 7, 1984. The amended returns excluded income awards made to appellant as a National Research Service Award (NRSA) recipient during each of the years. Respondent disallowed the claims on the grounds they were barred by the statute of limitations. This timely appeal followed.

Appellant contends that she was unable to file timely amended returns because it was only in 1983 that the tax treatment of NRSA's was changed to provide for retroactive relief from tax liability.

Respondent contends that appellant is barred by the provisions of section 19053 from filing a claim more than four years after the date prescribed for filing a return (April 15, 1982, and April 15, 1983, respectively, in appellant's case). Respondent further contends that amendments were regularly made to the Revenue Act of 1978, prior to 1983, affording tax relief to NRSA recipients.

We have had numerous occasions to deal with the issue presented by this appeal. (See, e.g., Appeal of Robert B. and DeVonne B. Marien, Cal. St. Bd. of Equal., Oct. 14, 1982; Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Estate of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967.) We have consistently held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure, for whatever reason, to file a claim for refund within the statutory period bars her from doing so at a later date. We see no reason to reach a different conclusion in the instant matter.

Appellant offers as an excuse for her delay her belief that the Internal Revenue Service did not change its 1977 revenue ruling until 1983. (Attachment to App.'s Ltr. dated June 18, 1984.) However, as respondent points out, Congress had previously enacted a bill authorizing the tax-exempt treatment of NRSA's for the

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years 1974 through 1979.^{2/} Thus, appellant could have filed amended returns as early as 1978, well within the statute of limitations period. The tax-exempt treatment for NRSAs was extended each year by Congress until the withdrawal of the 1977 revenue ruling by the Internal Revenue Service in 1983.^{3/}

For the foregoing reasons, respondent's action in this matter must be sustained.

^{2/} In 1978, Congress passed the Revenue Act of 1978 (Pub. L. No. 95-600, 92 Stat. 2763 (1978)). Section 161(b) of that Act provided that "[A]ny amount paid to, or on behalf of, an individual from appropriated funds as a national research service award under section 472 of the Public Health Service Act shall be treated as a scholarship or fellowship grant under Section 117 of the Internal Revenue Code of 1954." The Act further specified that the provisions of section 161(b) shall apply to awards made during calendar years 1974 through 1979 (section 161(b)(2)).

^{3/} (See Pub. L. No. 96-167, §9(b), 93 Stat. 1278 (1979); Pub. L. No. 96-541, §5, 94 Stat. 3204 (1980); Pub. L. No. 97-248, §285, 96 Stat. 569 (1982).)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Sharon G. Yaskulski for refund of personal income tax in the amounts of \$426 and \$252 for the years 1977 and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of September, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman
Richard Nevins, Member
Walter Harvey*, Member
_____, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9